

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

MICHAEL A. BURNHART

Plaintiff,

v.

ROBERT MASKO,

Defendant

Case No. C07-5045FDB

ORDER DENYING PLAINTIFF'S
MOTION FOR A CONTINUANCE

This Civil Rights action has been referred to the undersigned Magistrate Judge pursuant to Title 28 U.S.C. § 636(b)(1)(B). Before the court is plaintiff's motion asking for an extension of time from May of 2008 until October of 2008 to respond to defendants motion for summary judgment (Dkt # 33).

Plaintiff alleges he needs to conduct discovery prior to answering the motion for summary judgment. He brings his motion based on Fed. R. Civ. P 56 (f). Defendant's motion for summary judgment is based, in part, on failure to exhaust administrative remedies and qualified immunity (Dkt # 24). Raising the affirmative defense of qualified generally precludes discovery until the defense has been adjudicated. Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982).

ORDER

1 The court has examined the only document plaintiff sent to counsel which would be
2 considered discovery (Dkt # 35, exhibit). This document was provided by opposing counsel in the
3 response to plaintiff's motion. Plaintiff's requests for information do not touch on either the
4 grievance process or the defense of qualified immunity. Thus, plaintiff fails to show a continuance to
5 conduct discovery is warranted. The motion for an extension of time is **DENIED**.

6 The Clerk is directed to send a copy of this Order to plaintiff and counsel for defendant
7 Masko.

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9 DATED this 10 day of June 2008.

10 /S/ J. Kelley Arnold
11 J. Kelley Arnold
12 United States Magistrate Judge
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28 ORDER